THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER J. HADNAGY, an individual; and SOCIAL-ENGINEER, LLC, a Pennsylvania limited liability company,

Plaintiffs,

v.

JEFF MOSS, an individual; DEF CON COMMUNICATIONS, INC., a Washington corporation; and DOES 1-10; and ROE ENTITIES 1-10, inclusive,

Defendants.

No. 2:23-cv-01932-BAT

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR CIVIL CONTEMPT AND SANCTIONS

Noted For Consideration: March 24, 2025

Redacted Version

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INTRODUCTION

On February 21, 2025, defendants Def Con Communications, Inc. and Jeff Moss ("Def Con") filed a summary judgment motion that sets forth, in painstaking detail, Plaintiff Christopher Hadnagy's pattern of misconduct and harassment that resulted in his ban from the Def Con conference. Def Con received reports from more than a dozen people about Hadnagy's fixation on the bodies of his female employees and conference attendees and participants; regular outbursts of anger in the workplace and while at the Def Con conference; pattern of insulting employees in ways that are dehumanizing; design of faux-training exercises aimed at eliciting sexual information from strangers about things like penis circumcision, breast size, and feminine hygiene products; and brandishing a switchblade at work and at the Def Con conference. There's more, but those are the highlights.

The evidentiary record was voluminous—59 exhibits, totaling 776 pages. When it came to electronically filing the exhibits, Def Con filed one comprehensive document in the ECF system.

In filing the 776-page exhibit, counsel for Def Con inadvertently overlooked four pages containing information that Hadnagy self-labeled as confidential. When Plaintiff's counsel alerted Def Con to the unredacted information, Def Con acted in *less than three hours* to seal the exhibit and correct the redactions, and counsel for Def Con apologized to Plaintiff's counsel for the oversight. Plaintiff's counsel asked for conferral, and Def Con immediately agreed. Presumably, at the conferral, the parties would discuss if there were *any other steps* that Def Con's counsel could take to ensure those four pages were not disseminated. That would have been a productive conversation.

But rather than confer, Hadnagy's counsel took the Friday meeting off the calendar and did not reschedule; instead, Hadnagy spent the March 3rd weekend

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drafting a motion for *contempt* that he filed the following Monday which dramatically misrepresents the record and the nature of what happened, and unprofessionally ascribes false motives to Def Con and its counsel. Contrary to Hadnagy's complaints, nothing in his brief demonstrates deliberate conduct to disseminate confidential information, and nothing remotely rises to sanctionable conduct. Nothing. These things regrettably can happen in complicated filings, and courts expect the parties to work together to fix any inadvertent errors.

Def Con disseminated and linked to (1) *the motion*, which is not confidential; and (2) a publicly-available version of the docket at Courtlistener.com, a third-party public aggregator of PACER filings. Def Con did not link to the exhibits, much less the four unredacted pages within the 776-page exhibit compilation.

Hadnagy's bad-faith failure to confer with Def Con's counsel made things *worse* for himself. And it's not hard to see how: instead of conferring, Hadnagy filed this surprise motion at 4:28 p.m. on March 3, 2025, complaining for the first time the four pages of confidential material were still available at the Courtlistener link. And *less than 24 hours later*, Def Con had contacted the executive director of Courtlistener and obtained the sealing of the unredacted summary judgment exhibits. After Def Con e-mailed Courtlistener, the original link to the unsealed exhibit was sealed only 30 minutes later. That's worth saying again: it literally took Def Con *just 30 minutes* to get Courtlistener to "fix" the link. The exhibits are now no more available at Courtlistener than they are on PACER.

Here's the upshot: *Nothing* was stopping *Hadnagy* from simply contacting Courtlistener himself to seal the link, or from conferring with Def Con about the documents' availability at Courtlistener and asking Def Con to do something about it. But as the summary judgment motion lays out, Hadnagy has an appetite for retribution and will seize any opportunity to get retribution; here, he wanted to

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weaponize the public availability of the unredacted documents more than he wanted to protect his ostensible privacy interests.

What's more, Hadnagy predicates the motion on an unintended and limited disclosure of information that is, upon inspection, *not that sensitive or confidential in the first place*. The information concerns (1) three allegedly lost contracts; (2) Hadnagy's lost salary (which is necessarily the basis for his damages); and (3) his emotional distress (again, a basis for damages). In other words, Hadnagy wants exceedingly harsh sanctions against Def Con, and its counsel, for accidentally disclosing the *exact bases* for which he would seek damages at a public trial. This was not the secret formula for Coca-Cola; this is the bedrock of Hadnagy's damages case according to *his own discovery responses*.

At bottom, this motion never should have been filed. Counsel should be working together to fix inadvertent errors like this if and when they occur, rather than rushing off unprofessional motions for sanctions. Here, Def Con acted *immediately* to cure what amounted to a scrivener's error in a 776-page exhibit. Sanctions are inappropriate and unnecessary.

LEGAL STANDARD

Federal Rule of Civil Procedure 37(b) permits a court to issue sanctions for violations of a discovery order. Fed.R.Civ.P. 37(b)(2)(a). A protective order is a discovery order within the meaning of Rule 37(b). *United States v. Nat'l Med. Enterprises, Inc.*, 792 F.2d 906, 911 (9th Cir.1986). "The scope of sanctions for failure to comply with a discovery order is committed to the sound discretion of the district court." *Payne v. Exxon Corp.*, 121 F.3d 503, 510 (9th Cir. 1997). Rule 37's twin aims are "to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent." *E.E.O.C. v. Fry's Elecs., Inc.*, 287 F.R.D. 655, 658 (W.D. Wash. 2012).

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This is not a case where Def Con's conduct warrants sanctions or where any deterrent effect is necessary, and thus the "twin aims" of Rule 37 sanctions are not present. Def Con elaborates below.

STATEMENT OF FACTS

I. Def Con followed the Stipulated Protective Order regarding Plaintiff's other confidential documents.

Def Con's good faith should not be disputed. Before filing its summary judgment motion, Def Con literally *disclosed the exhibits it intended to use* to Hadnagy and advised what redactions Def Con thought would be necessary. And Def Con otherwise complied with the Stipulated Protective Order in protecting Plaintiff's other confidential documents and personally identifying information of third parties. This alone demonstrates Def Con's intent to follow the protective order, and Def Con's good faith compliance.

On February 18, 2025, counsel for Def Con worked with their internal e-discovery personnel to cross-check the as-produced confidentiality designations for their 59 summary judgment exhibits. Mertens Decl., ¶ 2. Through this process, Def Con identified two documents, Exhibits 35 and 54, that Plaintiff had designated confidential. Mertens Decl., ¶ 3. Def Con systematically redacted all references to the former clients with whom Plaintiff was communicating. *Id.*

On February 21, 2025, Def Con advised Plaintiff that, although Def Con substantively disagreed with the confidentiality designations on these two documents, Def Con had nonetheless applied all necessary redactions to protect Plaintiff's alleged business interests and to spare the parties unnecessary motions practice. Mertens Decl., ¶ 4, Ex. 1. Similarly, Def Con applied privacy redactions to protect the personally identifiable information of uninvolved third parties. *See, e.g.*, ECF No. 84 at 275, 564-66, 583, 615-616, 618, 660-661, 668, 722 (redacting personal

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email addresses and phone numbers); 595-598, 708-712 (redacting customer information to comply with the Stipulated Protective Order); 21, 51, 437-38, 441 (redacting sensitive and irrelevant personal information to avoid embarrassment to uninvolved third parties).

But one document slipped through: Hadnagy's interrogatory responses to Def Con's discovery requests. In those responses, the significant majority of which are not confidential, Hadnagy describes the statements he believes defamed him; identifies the people he talked to about the Transparency Report; identifies his social media handles; identifies (incompletely, as future discovery made clear) the people who have complained about him at trainings and seminars; and, as particularly relevant here, identifies the categories of losses he intends to rely on at trial, including the same lost contracts and emotional distress that he wants to sanction Def Con (and its counsel) for revealing in its 776-page exhibit. Nothing about those responses is especially confidential or secretive. What's more, Hadnagy did not "produce" the discovery responses as he had with Exhibits 35 and 54, and thus they did not have a confidential designation within Perkins Coie's e-discovery platform. Mertens Decl., ¶ 6. In other words, the safeguards in place—namely, the discovery platform which "codes" confidentiality designations in an automated fashion—didn't apply to these interrogatory responses because they weren't "produced" and therefore weren't "loaded" into that platform. It's no wonder that those are the only pages that slipped through.

When counsel for Def Con cross-checked the summary judgment exhibits for confidentiality, he inadvertently overlooked the confidentiality designations on portions of Hadnagy's discovery responses. Mertens Decl., ¶ 7. This oversight was completely accidental; a good-faith omission; and not for any litigation purpose. *Id.* ¶ 8. Contrary to the Motion's assertions, it was not deliberate; calculated;

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intentional; strategic; malicious; or part of a strategy to embarrass Plaintiff. Def Con did not direct this as a litigation strategy. Counsel inadvertently overlooked these designations. *Id.*

But there is serious doubt about whether this information is even confidential in the first place. The designated information falls into three categories: (1) contracts with former clients (by their nature, shared with third parties); (2) Hadnagy's allegedly lost salary; and (3) Hadnagy's assertions of [redacted] related to Def Con's alleged defamation.[1] See ECF 84 at 343-344 and 346-347.

II. Def Con responded immediately upon learning of the inadvertent disclosure.

On February 26, 2025, at 1:16 p.m., Hadnagy's counsel advised Def Con that Exhibit 21 to the summary judgment motion contained unredacted confidential information. Mertens Decl., ¶ 9, Ex. 2. Within *three hours*, Def Con investigated, confirmed the inadvertent filing, contacted the Court, sealed the original exhibit, and filed a corrected, redacted exhibit. *Id.* ¶ 10. Counsel for Def Con immediately explained to counsel for Plaintiff what had occurred and apologized directly to Plaintiff:

[1] *Plaintiff himself* alleges that he has suffered "emotional harm, exposure to contempt, ridicule, and shame" from Def Con's alleged defamation. Compl. ¶ 118. It follows that no one would—or as is apparent from the lack of public engagement with Plaintiff's ostensibly confidential medical information, did—raise an eyebrow about Plaintiff's mental health treatment.

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RE: Hadnagy v. Def Con | Meet and Confer re Confidentiality Designations

Mertens, Matthew (POR)
To Mark Conrad; Trambley, Lauren (SFO)
Cc Lauren English; Ted Buck; Perez, David A. (SEA); Dean, Jacob (WDC); Mahaffey, Freddie (POR)
Archive 2/25/2030

Reply | Reply All | Forward

Wed 2/26/2025 3:58 PM

Mark—

I missed this. We cross-checked all the exhibits against the documents' confidential designations you had provided in discovery, which is why we contacted you about the redactions we intended to (and did) apply to the other documents you had designated confidential. The RFA responses weren't "produced" and thus didn't have a confidential tag associated with them, and I didn't recall that there was confidentially designated material in the RFA admissions.

We are contacting the court right now to (1) seal the exhibit to my declaration; and (2) file an updated, redacted version that redacts the materials designated confidential in the RFA admissions.

I apologize to your client for my oversight. It was not intentional, as I hope our other efforts to maintain the confidentiality designations of your documents demonstrate.

Matt Mertens
PARTNER

Plaintiff springs the sanctions motion on Def Con without conferral.

On Thursday, February 27, in response to the e-mail above, counsel for Plaintiff told counsel for Def Con to "[p]lease be prepared to discuss this issue during our meet and confer tomorrow" as part of the parties' discussions about confidentiality issues more broadly. Mertens Decl., ¶ 11, Ex. 3. Counsel for Def Con was prepared to do so. *Id.* But the next day, Friday, February 28, at 10:53 a.m.—*seven minutes* before the parties were scheduled to confer—Hadnagy's counsel decided to add over 150 documents to a list of documents that Def Con had designated and that Hadnagy wanted to be not confidential. *Id.* ¶ 12, Ex. 4. In other words, going into this meet-and-confer, Hadnagy and his counsel were much more focused on getting *Def Con's* documents de-designated than on the four pages from the summary judgment exhibit.

Counsel for Def Con responded two minutes later and proposed that the parties reschedule their conferral for the week of March 3 to allow both sides to take informed

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positions on the down-designation request, and counsel for Hadnagy agreed. *Id.* At no point did counsel for Hadnagy suggest that the parties confer on his forthcoming sanctions motion or on how to further remedy any disclosure of Hadnagy's information. *Id.* ¶ 13. Hadnagy's counsel said literally nothing about that.

Instead, the next Monday, March 3, Plaintiff sprang this sanctions motion on Def Con *without* conferring with Def Con's counsel.

Plaintiff complains that Def Con's "social media posts linking to the information have not been removed." ECF 85 at 5:23. It is false that Def Con has linked, or is linking, to the information in question. The "courtlistener.com" link in Def Con's social media posts links to the entire docket for this matter, not the 776-pages of summary judgment exhibits or the specific unredacted information. Mertens Decl., ¶ 14, Ex. 5. Someone would have had to click the Courtlistener link; scroll through the entire docket to find the docket entry for the unsealed exhibits; click through on *that* link; and then scroll through hundreds of pages of exhibits to find the unredacted four pages. Neither Def Con nor its counsel told anyone to do this, in social media postings or otherwise, as neither Def Con nor its counsel knew the exhibits had inadvertently not been redacted.

III. Def Con promptly obtains the sealing of the unredacted documents at Courtlistener.com.

In less than 24 hours after receiving the Motion and learning that Plaintiff wanted the unredacted exhibits removed from Courtlistener, counsel for Def Con contacted the executive director of Courtlistener and had the exhibits sealed:

Mertens Decl., ¶ 15, Ex. 6.

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Def Con contacted Courtlistener on March 4 at 1:44 p.m.; the link to the unredacted documents was sealed *30 minutes later* by 2:14 p.m. *Id.* ¶ 16, Ex. 7. Def Con would have done this on Friday, February 28, or over the weekend if Plaintiff had bothered to confer with Def Con before filing this meritless motion. *Id.* ¶ 17. Instead of sending *one e-mail* (or directing Def Con to do so in a conferral that Hadnagy refused to reschedule) to get the link removed in *literal minutes*, Hadnagy instead chose to spend time on a baseless motion for sanctions. The Court should not countenance this kind of litigation gamesmanship.

LEGAL ARGUMENT

I. Plaintiff does not cite a single similar case where a court awarded sanctions.

This is simply not the kind of fact pattern that results in sanctions, as Plaintiff's motion makes clear. He does not cite a *single case* where a court sanctioned a party for unintentional, limited, and promptly cured disclosure of confidential information. Indeed, Western District of Washington authority is directly contrary. *See B.E.S. v. Seattle Sch. Dist. No. 1*, No. C05-2092RSM, 2007 WL 710095, at *2 (W.D. Wash. Mar. 6, 2007) (denying plaintiff's motion for sanctions based on defendant's inadvertent filing of unredacted documents in support of motion for summary judgment); *Point Ruston, LLC v. Pac. Nw. Reg'l Council of the United Bhd. of Carpenters*, No. C09-5232BHS, 2010 WL 11485531, at *1 (W.D. Wash. Mar. 2, 2010) (denying plaintiff's motion for sanctions based on defendant's mistake in filing unredacted confidential information that was "publicly filed for a short time" because "it is not uncommon" for attorneys of all experience levels to make mistakes); *Cen Com Inc. v. Numerex Corp.*, No. C17-0560RSM, 2018 WL 4184335, at *8 (W.D. Wash. Aug. 31, 2018) (declining to enter sanctions notwithstanding party's multiple

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violations of the stipulated protective order and failure to follow local rules regarding confidentiality and sealing).

Gaekwar v. Amica Mut. Ins. Co. is directly on point and strongly suggests that sanctions are inappropriate here. No. 2:22-CV-1551-BJR, 2023 WL 8449233 (W.D. Wash. Dec. 6, 2023). The plaintiff filed a declaration in support of his opposition to the defendant's motion for summary judgment and attached certain confidential materials from the defendant. *Id.* at *1. Counsel for defendant contacted counsel for plaintiff and asked him to withdraw the confidential materials, and within two hours, the plaintiff filed a revised declaration that did not include the confidential materials. *Id.* The court entered a stipulated order sealing the initial filing the next day. *Id.* The defendant sought sanctions of $5,000 because (1) the plaintiff's counsel violated the protective order; (2) the brief that the confidential materials were filed in support of did not rely on the materials; and (3) Plaintiff's counsel knew the materials were confidential. *Id.* The court nonetheless denied the motion for sanctions because this was a first-time offense with no prejudice to the defendant, plaintiff corrected the error within hours, and counsel for plaintiff admitted to his error. *Id.*

Gaekwar is virtually identical: this is a first-time mistake with no demonstrable prejudice to Plaintiff, as this is the same information he would use to support his damages at trial; counsel for Def Con admits to his error; and Def Con corrected the issue within three hours of Plaintiff bringing the issue to Plaintiff's attention. Def Con sealed the unredacted documents the same day Plaintiff raised the issue, which was even faster than the *Gaekwar* plaintiff. The *Gaekwar* court denied a $5,000 request for sanctions; there is simply no basis for Plaintiff's request of *thirty times* that amount.

Plaintiff relies primarily on *Harmon v. City of Santa Clara*, but this case is readily distinguishable. 323 F.R.D. 617 (N.D. Cal. 2018). In *Harmon*, the issue was

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whether to sanction counsel for the plaintiffs for "*publicly and purposefully releasing the key piece of evidence in this case*: a police body cam video showing [the plaintiff] being restrained and injured." *Id.* at 619 (emphasis added). Counsel for the plaintiff relied on an associate attorney's "five-minute inspection of the video's electronic files and his equivocal conclusion that he believed the video was not designated as confidential" before intentionally deciding to post the video on YouTube and disseminating links to the YouTube video. *Id.* at 626. After learning they had violated the protective order by posting the confidential video, counsel for plaintiff directed plaintiff to take down the video from YouTube but allowed her to keep a link to the video on her publicly available Facebook page. *Id.* at 621. The court held that even this conduct did not warrant civil contempt sanctions but awarded attorney's fees and costs against counsel for plaintiffs. *Id.* at 627.

This case is not like *Harmon* in any way. Counsel for Def Con did not "publicly and purposefully release the key piece of [confidential] evidence in this case." They inadvertently overlooked four confidential designations embedded within Plaintiff's otherwise non-confidential discovery responses and otherwise complied with the Stipulated Protective Order in filing the summary judgment motion. Plaintiff did not identify the discovery responses themselves as confidential, either in the document's caption or in any headers or footers. *See* ECF 84 at 331-364. Unlike in *Harmon*, counsel for Def Con did not intentionally conclude after an inadequate and haphazard investigation that Plaintiff's discovery responses could be filed publicly. Theirs was an inadvertent mistake, cured quickly. And unlike in *Harmon*—and contrary to Plaintiff's assertions—neither Def Con nor its counsel are linking to the inadvertently disclosed confidential materials. The opposite is true. As soon as Plaintiff made Def Con aware of the Courtlistener issue, Def Con cured it.

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Plaintiff contends there was "no legitimate need to file this information" because it had no bearing on Def Con's summary judgment motion. ECF 85 at 7:22-23. But Def Con intentionally filed complete documents in support of its summary judgment motion—including, crucially, those portions of documents *setting forth Plaintiff's position and point of view*—because Def Con did not want to be accused, either by Plaintiff or in the online discourse about this dispute, of cherry-picking information for summary judgment. Mertens Decl., ¶ 18.[2] To wit, Def Con filed the entirety of Plaintiff's discovery responses, including his various denials of Def Con's discovery requests. *See* ECF 84 at 331-364. Similarly, Def Con also filed the entirety of Plaintiff's draft book, which sets forth a highly slanted version of events from Plaintiff's perspective, rather than just attach specific pages from his book. *See* ECF 84 at 453-562. Def Con consistently did this across all its exhibits. *See* Mertens Decl., ¶ 18 (identifying, *inter alia*, Exhibits 1, 6, 8, 11, 14, 26, 39, 50, and 53 as full versions of documents rather than relevant excerpts). Plaintiff's assertion that counsel for Def Con intentionally posted Plaintiff's confidential information and then "deliberately engaged in an extensive online campaign to amplify the disclosure" is completely untrue. *Id.* ¶ 20.

In short, and unlike the public focus on the confidential video in *Harmon,* the focus of the summary judgment motion and the focus of the public response has been on Plaintiff's undisputed and non-confidential conduct. *See* Mertens Decl., ¶ 19, Ex. 8 (extended public discussion on Reddit of the assertions in the summary judgment motion). *No one*—except for Plaintiff, and apparently one anonymous and untraceable emailer over the March 3rd weekend, whose email provided timely

[2] This is precisely what has happened. *See, e.g.,* Mertens Decl., ¶ 19, Ex. 8 at pp. 16-17 (online discussion of "missing testimony" from summary judgment exhibits containing targeted excerpts from depositions).

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support for this sanctions motion—is talking about Plaintiff's salary, allegedly lost contracts, or his alleged [redacted]. The public focus has been exclusively on Def Con's motion for summary judgment and the undisputed facts of Plaintiff's extensive misconduct set forth therein.

II. Plaintiff overstates the sensitivity of the inadvertently disclosed information.

Plaintiff's contentions about "the immediate and severe risk" to his company do not make sense given the information inadvertently disclosed. Far from revealing "a detailed list of [his] company's clients" as he states, the interrogatory responses identify *three former clients* and the annual value of the contracts, without revealing anything about the nature of the services performed. ECF 84 at 343. Moreover, these are the precise contracts that Plaintiff identified as forming part of his damages. *See id.* at 342-43 (interrogatory identifying each person that allegedly terminated a contract with Plaintiff because of Def Con's public statements). Plaintiff, of course, cannot simultaneously insist on the competitive value and confidentiality of this information while *also* intending to claim these alleged losses at trial.[3]

The same is conceptually true for the information related to Plaintiff's medical treatment. Plaintiff attributes his [redacted]—to Def Con's actions. These are alleged losses for which he is seeking compensation at trial. Inadvertent, limited disclosure of the highest of high-level discussion about Plaintiff's medical treatment cannot possibly be the basis for sanctions when Plaintiff will presumably testify in exacting detail about this treatment if this matter goes to trial.

[3] The same is true for Plaintiff's lost salary, which he attributes to Def Con's actions in allegedly sabotaging his company. *See id.* at 347.

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In fact, Plaintiff has not designated *significantly* more sensitive information as "confidential" under the Stipulated Protective Order. For example:

The contrast between these non-confidential excerpts and the confidential excerpt for which Plaintiff seeks sanctions is striking. Sanctioning Def Con for inadvertently disclosing anodyne information about Plaintiff's alleged mental-health-related damages when Plaintiff has not designated much more sensitive information as "confidential" is incongruous. Against this backdrop, any award of sanctions is not "reasonable, fair, and just under the circumstances." *Harmon,* 323 F.R.D. 617 at 626.

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[4] Although Plaintiff has not marked this document or any of the information therein as "confidential," Def Con is nonetheless redacting it out of respect for Plaintiff's privacy.

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CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny the Motion for Sanctions in its entirety.

DATED this 11th day of March 2025.

I certify that this memorandum contains 3,757 words, in compliance with the Local Civil Rules.

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s/David A. Perez

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